



DATE: June 27, 2002

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SUBJECT: Prevailing Wage Determinations and Agricultural Job Orders

1. **Purpose.** To stress the critical need to review Prevailing Wage information on H-2A and non-H-2A job offers and interstate clearance orders prior to acceptance for consideration.

2. **References.** 20 CFR 653.501, 20 CFR 658.603, 20 CFR 655.102, .104, .107, 20 CFR 658.603, and H-2A Program Handbook—ETA Handbook 398.

3. **Background.** Migrant and Seasonal Farmworkers (MSFW) federal regulations published June 10, 1980, at 20 CFR 653.501(d)(4) and (e)(1) and H-2A Federal Regulations at 20 CFR 658.603 require that no state agency shall place job orders seeking workers to perform agricultural work into intrastate or interstate clearance unless the wages offered are as follows:

WAGES

Prevailing Wages, as appropriate, must be applied to H-2A and non-H-2A applications. These Wages remain in effect until other Prevailing Wage survey is confirmed or, as applicable, superseded by the last publication of an Adverse Effect Wage Rate (AEWR).

H-2A job orders: Employers will pay the State or Federal minimum wage, prevailing wage, or the AEWR, whichever is highest.

Non H-2A (only) job orders: Employers will pay the State or Federal minimum, or the prevailing wage, whichever is highest.

(Piece Rate)

H-2A job orders: if the piece rate basis (at the end of each pay period) does not result in average hourly rate earnings, at least equal to the amount the worker would have earned with the highest hourly rate, the worker's pay should be supplemented, so that the earnings are as much as the worker would have earned with the highest hourly wage.

Non H-2A (only) job orders: If the employer pays on a piece rate basis, the piece rate will be at least the prevailing rate for such activity in the area of intended employment.

(No Finding Determination)

H-2A job orders with a "NO FINDING" determination: if the employer pays a piece rate for the activity, or per hour, earnings must not be less than the hourly AEW rate of pay.

Non H-2A (only) job orders with a ANO FINDING@ determination: If the employer pays a piece rate for the activity, or per hour, the Fair Labor Standard Act (FLSA) minimum wage is the guaranteed minimum rate of pay.

4. **Action Required.** States are requested to:

(A) Establish a file of current agricultural prevailing wage findings. This file should be updated on a continuous basis, and should consist primarily of Regional Office prevailing agricultural wage determination memoranda to the State;

(B) Instruct staff reviewing agricultural interstate and intrastate H-2A and non-H-2A clearance orders and job offers to promptly refer to the State's prevailing wage file to determine if the wage rate on the employer's job order is the approved prevailing wage rate, both in terms of actual dollar amount and piece versus hourly rate. If necessary, State staff must contact the employer immediately and instruct them to correct the wage rate, and then inform the Regional Office of the correction.

(C) Contact the Regional Office immediately in instances where no approved prevailing wage has been established, or the established rate is from last harvest season and/or is over one year old, or does not appear in the State file, in order to determine an acceptable prevailing wage rate for the job order under review.

5. **Inquiries.** Any questions should be directed to Val Castaneda at 617.565.2265.

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